

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : Crim. No. 4:CR-09-00345
:
v. : (Judge Jones)
:
GREGORY MORTON : **ELECTRONICALLY FILED**

**UNITED STATES' MOTION *IN LIMINE* TO PRECLUDE
DEFENSE EXPERT FROM PROVIDING AN OPINION
ON THE ULTIMATE ISSUE**

COMES NOW, the United States by Dennis C. Pfannenschmidt, United States Attorney for the Middle District of Pennsylvania, and moves your Honorable Court, in accordance with Federal Rules of Evidence 103(c) and 704(b), to preclude proposed defense expert, Dr. Daniel Spitz, from providing expert opinion that defendant acted in self-defense or lacked the intent to commit crimes. In support of this request, the following details are provided.

1. After discussions with this Court on June 17, 2010, defense counsel on June 18, 2010, provided, in accordance with Federal Rule of Criminal Procedure 16(b), a copy of a report from Dr. Daniel J. Spitz, a forensic pathologist. A copy of that report is enclosed.

2. *Inter alia* Dr. Spitz in his second opinion in the report asserts that "Gregory Morton was the victim of an assault and that he was engaged in an act of self-defense when Scott Lilly's death occurred." He further opines that, "[i]t is

therefore most likely that the death of Scott Lilly was caused by Mr. Morton during an act of self defense."

3. The undersigned sent on June 23, 2010, an email to defense counsel asking that no reference by Dr. Spitz be made to those aspects of his report since they invade the jury's prerogatives. It was requested that Mr. Thornton advise the undersigned whether he agrees to this limitation by the morning of June 23, 2010, or a motion *in limine* seeking this relief would be filed. Mr. Thornton in a reply email on the same day stated that he would not limit Dr. Spitz' testimony since, in his view, the opinions are "within his area of expertise and a reasonable degree of medical certainty."

4. Federal Rule of Evidence 704(b) provides that "no expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone." Dr. Spitz challenged testimony is an effort to explain and undermine the state of mind needed to support Second Degree Murder and Voluntary Manslaughter which charges defendant faces. It also is an effort to bolster "a defense thereto," self-defense. States of mind necessary to support a particular conviction or to establish justification for killing a person are legal terms, not medical conditions, and

consequently beyond the expertise of a forensic pathologist. A supporting brief will be submitted on behalf of this *in limine* request.

WHEREFORE, for the above-stated reasons, this Honorable Court should preclude Dr. Spitz from testifying about the actions or mental state of Gregory Morton on August 1, 2007.

Respectfully submitted,

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United States Attorney

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Dated: June 24, 2010

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of
the foregoing

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to be electronically mailed on June 24, 2010, to:

ADDRESSEE: Thomas A. Thornton, Esquire
Thomas_Thornton@fd.org

By s/Frederick E. Martin
FREDERICK E. MARTIN
Assistant United States Attorney